

Jordan Hale

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Sent: Wednesday, June 24, 2015 3:53 PM
To: Jimmy Blacklock; chip.roy@texasattorneygeneral.gov
Cc: Ben Taylor; Brantley Starr; Allison Castle (OAG)
Subject: FRC's thoughts post SCOTUS decision
Attachments: Scan.pdf

Hello Team Texas,

Good afternoon...

Attached is an outline of thoughts we've put together at Family Research Council to consider as we learn of the SCOTUS decision on marriage. Please reach out if you guys would like to visit on this. I'll do whatever I can to help in response to the decision our country receives.

Respectfully,

Craig

The Laws of God are greater than the laws of men

FRC Outline on Court Ruling
Key Messages and Legislative Strategies Depending on Outcome

Loss on Both Questions before the Court

Tone: Defiant, but hopeful.

Message: We do not accept as legitimate the Court's decision. It overturns the freedom of the people and imposes upon the states a redefinition of marriage. The Court has overstepped the bounds of the constitution in creating supposed rights.

The Constitution is silent on same-sex marriage. In creating this right out of whole cloth, — like it did in *Roe v. Wade*— rather than bring resolution to contentious issue of public policy, the Supreme Court has insured that this controversy will not go away.

The Court recently cautioned against the very thing it has done here, stating “[d]eliberative debate on sensitive issues . . . all too often may shade into rancor. But that does not justify removing certain court-determined issues from the voters’ reach. Democracy does not presume that some subjects are either too divisive or too profound for public debate.” *Schuette v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623, 1638 (2014).

Speak the truth about marriage:

- They can issue a ruling on same-sex marriage, but they cannot overrule the truth about natural marriage.
- The freedom to democratically address society’s most fundamental institution is central to ordered liberty. The Court has taken that freedom from the people.
- The Court overrode the votes of 50 million Americans who have reaffirmed marriage as the union of a man and a woman.
- Just as with *Roe v. Wade* in 1973, the Court will not resolve this matter.
- This ruling will not bring consensus, rather it will further divide America.

Use positive messages about “natural marriage” along the lines of: The Court’s ruling does not alter the facts:

- “Academic studies show over and over that kids raised by their married mom and dad are most likely to be successful. A child needs a mom and a dad.”
- “Marriage is a positive way for a man a woman to share long-lasting commitment to each other and their children. Making marriage no different than any other adult relationship makes the marriage commitment less meaningful and easier to disregard.”
- “Marriage is an important goal for men and women to strive for because

marriage between a man and a woman increases economic productivity, financial success, personal health and happiness.”

Use messages about non-discrimination along the lines of:

- “Government should not fine or penalize people who operate their businesses in accordance with personal beliefs that marriage is the union of a man and a woman.”
- “Customers should not force business owners to violate their religious beliefs, rather they should be tolerant of different views.”
- “Laws shouldn’t mandate that small business owners like t-shirt makers, photographers, or cake bakers celebrate same-sex ceremonies in violation of the business owners’ personal beliefs about marriage.”
- “The government shouldn’t discriminate against applicants for federal grants and contracts simply because applicants believe marriage is between a man and a woman. The law shouldn’t discriminate against people who believe marriage is between a man and woman or punish them for their belief.”
- “Laws forcing family business owners to violate their moral beliefs in running their businesses hurt our economy because they create fear and uncertainty for job creators and discourage hiring.”

Tell Stories: Americans should be free to believe and live in accordance to those beliefs that marriage is between a man and woman. <http://freetobelieve.com/>

Actions:

- 1) States with pro-marriage constitutions should not alter them even though the Court has disregarded them. As with the legalization of abortion, states supporting human life have not changed their constitutions, and states should not change their pro-marriage constitutions as this ruling will be qualified, narrowed and ultimately challenged.
- 2) The GOP should not change its position in support of marriage (Platform)
- 3) Congress and state legislatures should immediately pass government non-discrimination protections.
 - a. Federally we must pass the First Amendment Defense Act introduced by Senator Mike Lee (R-UT) and Rep. Raul Labrador (R-ID).
 - b. State legislatures should pass protections from government discrimination against those who believe in marriage between a man and woman. Use federal bill as model legislation.
 - c. Governors in all states, but especially in the 30 states whose voters passed constitutional amendments defining marriage as the union of one man and one the Court has now effectively overridden, should immediately issue executive orders to protect from government discrimination against those who believe in natural marriage or that sexual relationships are properly reserved for such. See Jindal Executive Order.
- 4) Presidential Election and Senate Election in 2016 is essential in order to put Constitutionalists on the Supreme Court—stop liberal agenda from re-writing the U.S. Constitution in their view.

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Option 2: Split decision with Win on Question 2 re State Licensing of SSM

Tone: Firm, resolute and optimistic

Message:

- The Supreme Court rightly upheld the people's freedom to affirm marriage as the union of a man and a woman.
- The Court did not force a redefinition of society's defining, pre-governmental institution on the entire nation.
- The Court did, however, say all states must recognize same-sex unions solemnized in states where such unions are legal and treat these unions in the same way as natural marriage. Some may view this as a back door to same-sex marriage in the states, but states will be free to enact policies that promote natural marriage, society's most vital building-block.
- There is no right to same-sex marriage in the U.S. Constitution and that means the American people will continue to have a voice and a vote on this matter of profound public and social policy.

Use positive Messages on natural marriage.

Use messages about government discrimination.

"Free to believe" messages and stories (linked above)

Actions:

- 1) States licensing same-sex marriages due to adverse federal court rulings should file motions under Federal Rule of Civil Procedure 60(b) to obtain relief from the adverse lower court judgments based on a positive Supreme Court ruling.
 - a. 18 states licensing same sex marriages should challenge appeals court rulings:
 - 4th Circuit—affects VA, WV, NC, SC (MD had adopted it legislatively)
 - 7th Circuit—affects WI, IN (IL had adopted it legislatively)
 - 9th Circuit—affects AK, OR, CA, AZ, NV, ID, MT (HI and WA adopted legislatively)
 - 10th Circuit—affects WY, UT, CO, KS, OK (NM had state court ruling first)
 - b. 2 states with same-sex marriages resulting from federal court decisions which were not stayed by the 11th Circuit (FL and AL)

- C. 1 state's (PA) marriage law was overturned by a federal district court but which was not appealed.
- 2) Pass Government Non-Discrimination Protections—U.S. Congress, state legislatures, state governors. Additionally, states with marriage laws/amendments on the books should prepare to defend against a new effort to pass special protections for sexual orientation and gender identity regardless of “marriage”.
 - 3) Presidential and Senate Elections are essential to put constitutionalists on the Supreme Court.

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Option 3: Win on both questions. States can affirm marriage as a union between one man and woman and not recognize out of state “same-sex marriages.”

Message:

- The Court has shown respect for the Constitution and the voters in the 30 states that have affirmed marriage as the union of one man and one woman.
- They should be applauded for ruling that states may affirm marriage between one man and one woman and protecting the ability of the people and states to support marriage between a man and woman.
- The Court followed the Constitution and did not find a new right to “same sex marriage” where it clearly does not exist.
- Use positive marriage messages.
- Use messages on government-non-discrimination as efforts to redefine marriage will continue and pressure at the state level to require proponents of natural marriage to accept same-sex marriage will continue.

Actions:

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 - b. 2 states with same-sex marriages resulting from federal court decisions which were not stayed by the 11th Circuit (FL and AL)
 - c. 1 state's (PA) marriage law was overturned by a federal district court

but which was not appealed.

- 2) Pass government non-discrimination protections at the state level to protect those who affirm natural marriage.
- 3) Pass federal government non-discrimination protections since the current Administration is already redefining marriage to include "same sex marriages" and is pressuring those who do business with the federal government to redefine marriage even if this conflicts with their beliefs on marriage.
- 4) Oppose renewed efforts to provide special protections for sexual orientation and gender identity.
- 5) Pass the State Marriage Defense Act to ensure the Federal government is not affirming marriages that states do not affirm.
- 6) Presidential and Senate Elections are essential to ensure that the next justices on the Supreme Court are constitutionalists and maintain the right of states to define marriage between a man and woman.